IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.71 OF 2004

Commissioner of Central Excise
(Appeals), Mumbai III .. Appellant.

V/s.

M/s.Indian Smelting & Refining
Company Limited .. Respondent.

Mr.R.V. Desai, senior counsel with Mr.A.S. Rao for the appellant.

**CORAM : R.M. LODHA &**
**J.P. DEVADHAR, JJ.**

**DATED : 28TH MARCH, 2006.**

P.C. :

Heard Mr.R.V. Desai, the learned senior counsel for the revenue.

2. Even if we assume that Mr.R.V. Desai is right in his contention that the judgment of the Supreme Court in the case of Ujagar Prints could not be applied as the goods manufactured on job-work are not the assessee's final product, we find that the appeal filed by the revenue against the order of the Commissioner of Customs and Central Excise (Appeals) was liable to be dismissed.

3. The Commissioner (Appeals) in the impugned order held thus :

"..... The inputs have been used in the

> process of melting and pre-heating, which is not in dispute, and these are essential to the manufacture of goods. Hence these inputs, both used as the raw material and used by he assessee under Rule 57F(4) are used in relation to the manufacture of final product. Credit, therefore, cannot be denied on this account. The Adjudicating Authority has also observed that no duty is paid on the goods because process done is under job work and hence the credit is recoverable from the appellant. At the outset the appellant submitted that the show cause notice does not make any allegation to this effect. The perusal of the show cause notice indicates that show cause notice actually does not make any allegation to this effect. Thus the Deputy Commissioner, Central Excise has traversed beyond the scope of show cause notice is confirming the demand. This apart, Notfn. No.214/86 specifically exempts job work from payment of duty on the goods received under Rule 57F(4). Thus duty is not required to be paid on the same."

4. Mr.R.V. Desai, the learned senior counsel for the revenue could not point out any infirmity in the consideration of the matter by the Commissioner (Appeals).

5. In this view of the matter, we are satisfied that dismissal of the appeal by the Tribunal was not erroneous.

6. No substantial question of law arises in this appeal. Dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)